

FILED
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U.S. DISTRICT COURT E.D.N.Y.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

★ **MAR 29 2019** ★

-----X
BOW & DRAPE, INC.,

BROOKLYN OFFICE

Plaintiff,

OPINION AND ORDER

- against -

18-cv-5066 (NG) (SJB)

**TRULY COMMERCE INC. and DAY TO DAY
IMPORTS INC.,**

Defendants.

-----X
GERSHON, United States District Judge:

On March 5, 2019, defendant Day to Day Imports Inc. filed a letter regarding its anticipated motion to dismiss plaintiff's complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure. In response, plaintiff contests the merits of the anticipated motion but also seeks the opportunity to file an amended complaint if the court finds its current allegations "insufficient."

On that same day, Day to Day also filed a letter seeking a pre-motion conference regarding its anticipated motion regarding defendant Truly Commerce Inc.'s cross claim against it. Day to Day indicated that it planned to move to dismiss the cross claim under Rule 12(b)(6) or, alternatively, to move for a more definite statement under Rule 12(e). In response to Day to Day's letter, Truly Commerce seeks the opportunity to amend its cross claim to provide a more definite statement.

The court takes no position on the merits of Day to Day's proposed motions. With respect to plaintiff, it is up to it to decide whether to file an amended complaint. Plaintiff is hereby granted leave to file an amended complaint by April 5, 2019. Truly Commerce is granted leave to file an amended answer by April 19, 2019.

Day to Day's requests for a pre-motion conference are deemed moot at this time. Day to Day shall alert the court by May 3, 2019 if it still intends to file any Rule 12 motion.

SO ORDERED.

/s/ Nina Gershon

NINA GERSHON
United States District Judge

March 28, 2019
Brooklyn, New York